

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

THOMAS JOHNSON,)
Petitioner,)
v.) Case No. CV415-072
UNITED STATES,)
Respondent.)

REPORT AND RECOMMENDATION

Thomas Johnson, convicted in the Chatham County Superior Court of child molestation, statutory rape, and making a false statement to a police officer, has filed what he styles as a 28 U.S.C. § 2255 motion attacking his state conviction and sentence. (Doc. 1 at 1.) He previously filed a 28 U.S.C. § 2254 petition challenging the same conviction, and it was dismissed as both untimely and unexhausted. *Johnson v. Lee*, No. CV413-176 (S.D. Ga. Aug. 26, 2013). Seeking to make an end-run around that determination, he relies upon inapplicable statutory authority. By its own terms, § 2255 applies only to prisoners in custody under the sentence of a federal court. 28 U.S.C. § 2255(a). In effect, then,

Johnson has filed a successive § 2254 petition, which he may not do. As explained in Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts, a petitioner presenting a second or successive petition “must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4).” Since he has not obtained such an order, this case should be **DISMISSED**.

SO REPORTED AND RECOMMENDED this 27th day of March 2015.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA